

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

LEONARDO ALVARADO-SANCHEZ,

Plaintiff,

v.

FIRST HOSPITAL CORPORATION,
et al.,

Defendants.

Civil No. 07-1272 (JAF)

OPINION AND ORDER

Plaintiff, minor Leonardo Alvarado-Sánchez, represented by his mother, Leida Sánchez-Ortiz, brings this action under 42 U.S.C. § 1983 (2007) and 31 L.P.R.A. § 5141 (2005) ("Article 1802") against Defendants, First Hospital Corporation; Alternative Behavioral Services; First Hospital Panamericano; First Corrections Puerto Rico; Administration of Juvenile Institutions of the Commonwealth of Puerto Rico ("AJI"); José Negrón-Fernández, Administrator of Juvenile Institutions, and his conjugal partnership with Jane Doe; Rafael O. Malavé, sub-director of Juvenile Institutions, and his conjugal partnership with Jane Roe; and various other unknown defendants. Docket Document No. 1. Plaintiff alleges violations of his Fifth, Eighth, and Fourteenth Amendment rights, resulting from Defendants' failure to prevent repeated acts of physical aggression and attempted rape against him during his court-ordered stay at the Puerto Rico

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1 Adolescent Training School ("PRATS"), located in Río Grande, Puerto
2 Rico. Id. Defendants Malavé, AJI, Negrón, and the conjugal
3 partnership of Negrón and Jane Doe, move to dismiss the case pursuant
4 to Federal Rule of Civil Procedure 12(b)(6). Docket Document Nos. 15,
5 32. Plaintiff opposes. Docket Document No. 20.

6 I.

7 **Factual and Procedural Synopsis**

8 We derive the following factual summary from Plaintiff's
9 complaint. Docket Document No. 1. As we must, we assume that all of
10 Plaintiff's allegations are true and make all reasonable inferences
11 in his favor. Alternative Energy, Inc. v. St. Paul Fire & Marine
12 Ins. Co., 267 F.3d 30, 36 (1st Cir. 2001).

13 In 2002, a court order placed Plaintiff, a minor who suffers
14 from schizophrenia, under the custody and supervision of PRATS in Río
15 Grande, Puerto Rico. From the time Plaintiff entered PRATS until
16 2004, other PRATS residents frequently assaulted him and threatened
17 to rape him.

18 On one occasion, four or five residents subdued Plaintiff using
19 physical force and weapons, surrounded him, and attempted to rape
20 him. When Plaintiff resisted, the other residents attacked him.

21 Another time, a resident assaulted Plaintiff, provoking him into
22 defending himself. The incident resulted in Plaintiff's confinement.
23 PRATS employees tied up Plaintiff and placed him in confinement with
24 a resident who was not similarly restrained. The other resident beat

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1 Plaintiff, urinated on him, and threw hot coffee on him. PRATS
2 employees supplied the resident with the coffee. Other employees did
3 nothing to stop the assault on Plaintiff.

4 Once, while other residents assaulted Plaintiff, Gerardo
5 Clemente, a PRATS employee, shouted out "kill him."

6 Additionally, Plaintiff did not receive his medication
7 consistently; was treated with the wrong medication; did not get a
8 proper education; received inadequate nutrition; feared for his life;
9 and was assaulted by PRATS employees with a water pressure hose when
10 he attempted to defend himself.

11 II.

12 Motion to Dismiss Standard Under Rule 12(b)(6)

13 Pursuant to Federal Rule of Civil Procedure 12(b)(6), a
14 defendant may move to dismiss an action against him, based solely on
15 the pleadings, for the plaintiff's "failure to state a claim upon
16 which relief can be granted." FED. R. CIV. P. 12(b)(6). In assessing
17 a motion to dismiss, "[w]e begin by accepting all well-pleaded facts
18 as true, and we draw all reasonable inferences in favor of the
19 [nonmovant]." Wash. Legal Found. v. Mass. Bar Found., 993 F.2d 962,
20 971 (1st Cir. 1993); see also Coyne v. City of Somerville, 972 F.2d
21 440, 442-43 (1st Cir. 1992). We then determine whether the plaintiff
22 has stated a claim under which relief can be granted.

23 A plaintiff must set forth "a short and plain statement of the
24 claim showing that the pleader is entitled to relief," Fed. R. Civ.

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1 P. 8(a)(2), and need only give the respondent fair notice of the
2 nature of the claim and petitioner's basis for it. Swierkiewicz v.
3 Sorema N.A., 534 U.S. 506, 512-15 (2002). To survive a motion to
4 dismiss, a plaintiff must allege facts that demonstrate "a plausible
5 entitlement to relief." Rodriguez-Ortiz v. Margo Caribe, Inc., 490
6 F.3d 92, 95 (1st Cir. 2007) (citing Bell Atl. Corp. v. Twombly, __
7 U.S. __, 127 S.Ct. 1955, 1967 (2007)).

8 III.

9 Analysis

10 Defendants move to dismiss on the grounds that (1) the Eleventh
11 Amendment bars suits against AJI and its employees in their official
12 capacity; (2) Plaintiff has failed to state a claim under 42 U.S.C.
13 § 1983; (3) there is no supervisory liability for Defendants Malavé
14 and Negrón under § 1983; and (4) Defendants Malavé and Negrón are
15 entitled to qualified immunity. Docket Document No. 15. We examine
16 each of these arguments in turn.

17 **A. Eleventh Amendment**

18 Defendants argue that Eleventh Amendment sovereign immunity bars
19 Plaintiff's claims against Defendant AJI and its employees, Malavé
20 and Negrón, in their official capacities. Docket Document No. 15.

21 The Eleventh Amendment states that the "[j]udicial power of the
22 United States shall not be construed to extend to any suit . . .
23 commenced or prosecuted against one of the . . . States by citizens
24 of another State." U.S. CONST., amend. XI; see also Edelman v.

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1 Jordan, 415 U.S. 651, 663 (1974) (stating that "an unconsenting State
2 is immune from federal-court suits brought by its own citizens as
3 well as by citizens of another State"). The main purpose of the
4 Amendment "is to minimize federal courts' involvement in disbursal of
5 state monies." Gotay Sanchez v. Pereira, 343 F. Supp. 2d 65, 72
6 (D.P.R. 2004). The Eleventh Amendment, accordingly, also bars suits
7 for monetary relief against state officers in their official
8 capacities, because such awards would be paid from the state
9 treasury. Ford Motor Co. v. Dep't of the Treasury, 323 U.S. 459, 464
10 (1945).

11 "For Eleventh Amendment purposes, the Commonwealth [of Puerto
12 Rico] is treated as if it were a state; consequently, the Eleventh
13 Amendment bars any suit brought against it." Id. at 71-72 (citing
14 Metcalfe & Eddy, Inc. v. P.R. Aqueduct and Sewer Auth., 991 F.2d 935
15 (1st Cir. 1993)); see also Espinal-Dominquez v. Puerto Rico, 352 F.3d
16 490, 493-94 (1st Cir. 2003). Because "a state only has existence
17 through its instrumentalities that carry out its functions and
18 establish its public policy . . . suits brought against non-
19 autonomous instrumentalities of the state [are] considered suits
20 against the state itself." Padilla Cintron v. Rossello Gonzalez, 247
21 F. Supp. 2d 48, 57 (D.P.R. 2003).

22 Both parties to this case agree that Defendant AJI is an
23 instrumentality of the Commonwealth. Docket Document Nos. 12, 15.
24 We, therefore, find that the Eleventh Amendment bars Plaintiff's

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claims against AJI and Malavé and Negrón in their official capacities, and dismiss those claims with prejudice.

B. Failure to State a Claim Under § 1983

Defendants argue that Plaintiff has failed to state a claim under § 1983. Docket Document No. 15.

Under § 1983, persons acting under color of state law are liable for subjecting any citizen or person within the jurisdiction of the United States to "the deprivation of any rights, privileges or immunities secured by the Constitution." 42 U.S.C. § 1983.

Plaintiff alleges violations of his Fifth, Eighth, and Fourteenth Amendment rights. Docket Document No. 1. Defendants argue that Plaintiff's allegations do not amount to constitutional violations. Docket Document No. 15.

1. Cruel and Unusual Punishment

The Eighth Amendment prohibits the infliction of cruel and unusual punishment upon convicted criminals. U.S. CONST. amend. VIII; Deshaney v. Winnebago County Dep't of Social Services, 489 U.S. 189, 199 (1989) ("The state does not acquire the power to punish with which the Eighth Amendment is concerned until after it has secured a formal adjudication of guilt.") (quoting Ingraham v. Wright, 430 U.S. 651, 671-72 n. 40 (1977)). Because Plaintiff is not a convicted criminal, the Eighth Amendment cannot serve as the basis for his § 1983 claim.

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1 **2. Due Process**

2 Plaintiff alleges violations of his due process rights under the
3 Fifth and Fourteenth Amendments of the Constitution. Docket Document
4 No. 1. Because the Fifth Amendment applies to the federal government,
5 and Plaintiff's claims are directed at Commonwealth actors, we
6 analyze Plaintiff's due process allegations under the Fourteenth
7 Amendment. Id.; U.S. CONST. amend. V.

8 The Fourteenth Amendment provides that no state shall "deprive
9 any person of life, liberty, or property, without due process of the
10 law." U.S. CONST. amend. XIV, § 1. "To state a claim for a violation
11 of procedural due process, a plaintiff must (1) assert a protected
12 property or liberty interest, and (2) show that state action deprived
13 her of that interest without due process of law." Siaca v. Autoridad
14 de Acueductos y Alcantarillados de P.R., 160 F. Supp. 2d 188, 202
15 (D.P.R. 2001). Here, Plaintiff has alleged gross negligence and
16 deliberate indifference, not the deprivation of a protected property
17 or liberty interest. Docket Document No. 1. Plaintiff has,
18 therefore, failed to allege a violation of his procedural due process
19 rights.

20 The Fourteenth Amendment, however, also protects substantive due
21 process rights when state actors engage in conscience-shocking
22 behavior. Mongeau v. City of Marlborough, 492 F.3d 14, 17 (1st Cir.
23 2007). For liability to attach, an official action must be
24 sufficiently conscience-shocking as to be unjustifiable by any

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1 government interest. County of Sacramento v. Lewis, 523 U.S. 833,
2 850 (1998); Collins v. Nuzzo, 244 F.3d 246, 251 (1st Cir. 2001).

3 "For involuntarily committed patients, 'a set of unique rules
4 has developed' according to which 'failures to act . . . may comprise
5 a due process or other constitutional violation because the state-
6 imposed circumstance of confinement prevents such individuals from
7 helping themselves.'" Davis v. Rennie, 264 F.3d 86, 98 (1st Cir.
8 2001) (quoting Hasenfus v. LaJeunesse, 175 F.3d 68, 71 (1st Cir.
9 1999)); see also Youngberg v. Romeo, 457 U.S. 307, 314-25 (finding
10 that Fourteenth Amendment substantive due process requires the state
11 to provide involuntarily committed mental patients with the services
12 necessary to ensure their "reasonable safety").

13 Plaintiff alleges that, during his court-ordered confinement in
14 PRATS, he suffered repeated physical assaults as a direct result of
15 Defendants' deliberate indifference and, in some cases, direction and
16 encouragement. Docket Document No. 1. We find that these allegations,
17 if true, would constitute a violation of Plaintiff's substantive due
18 process rights. See Rennie, 264 F.3d at 117 (affirming district
19 court finding of a substantive due process violation where defendants
20 observed the use of excessive force against a mental health patient
21 and failed to intervene); Hasenfus, 175 F.3d at 71 (stating that the
22 failure of a mental institution's staff to stop one patient from
23 assaulting another may amount to a substantive due process claim
24 triggering liability under § 1983). We, therefore, find that
25 Plaintiff has successfully stated a § 1983 claim based on alleged

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violations of his Fourteenth Amendment substantive due process rights.

C. Supervisory Liability

Defendants argue that § 1983 does not allow for liability based on respondeat superior. Docket Document No. 15.

Under § 1983, a supervisor is liable for a deliberately indifferent act or omission when there is an affirmative link between the act or omission and the subordinate's violation of the plaintiff's constitutional rights. Febus-Rodriguez v. Betancourt-Lebron, 14 F.3d 87, 92 (1st Cir. 1994).

Here, Plaintiff alleges that Negrón and Malavé, the administrator and sub-director of AJI, sent Plaintiff to PRATS despite the fact that they knew or should have known that PRATS employees tolerated and encouraged abuses against their residents. Docket Document No. 20. Plaintiff further alleges that Defendants should have been aware of previous reports and litigation regarding this abuse. Id. Because a supervisor may be liable under § 1983 for deliberate indifference, these allegations suffice to survive a motion to dismiss. Febus-Rodriguez, 14 F.3d at 92; Maldonado-Denis v. Castillo-Rodriguez, 23 F.3d 576, 582 (1st Cir. 1994).

D. Qualified Immunity

Defendants assert that Malavé and Negrón are entitled to qualified immunity. Docket Document No. 15.

Qualified immunity protects state officials from the burden of standing trial or facing other onerous aspects of litigation.

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1 Saucier v. Katz, 533 U.S. 194, 200 (2001). "The reach of this
2 doctrine is long, but not infinite." Pagan v. Calderon, 448 F.3d 16,
3 31 (1st Cir. 2006). The test to determine whether Defendants are
4 entitled to qualified immunity has three parts: (1) "whether the
5 plaintiff's allegations, if true, establish a constitutional
6 violation"; (2) "whether the constitutional right at issue was
7 clearly established at the time of the putative violation"; and
8 (3) "whether a reasonable officer, situated similarly to the
9 defendant, would have understood the challenged act or omission to
10 contravene the discerned constitutional right." Id. Qualified
11 immunity, thus, "safeguards even unconstitutional conduct if a
12 reasonable officer at the time and under the circumstances
13 surrounding the action could have viewed it as lawful." Jordan v.
14 Carter, 428 F.3d 67, 71 (1st Cir. 2005).

15 As previously discussed, under substantive due process, mental
16 health institutions holding involuntarily-committed patients are
17 responsible for the inmates' reasonable safety. Youngsberg, 47 U.S.
18 at 314-25; Rennie, 264 F.3d at 98. This constitutional right was
19 clearly established when the incidents at issue in this case took
20 place. We find that a reasonable administrator or sub-director of
21 juvenile administrations would have understood that failing to
22 address previous allegations of abuse and confining Plaintiff without
23 taking measures to ensure his safety would contravene Plaintiff's
24 constitutional rights. We, therefore, find that Defendants Malavé
25 and Negrón are not entitled to qualified immunity.

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1 **IV.**

2 **Conclusion**

3 For the aforementioned reasons, we hereby **DENY** Defendants'
4 motion to dismiss pursuant to Federal Rule of Civil Procedure
5 12(b)(6), Docket Document No. 15. We **DISMISS** Plaintiff's § 1983
6 claims against AJI and Defendants Malavé and Negrón in their official
7 capacities **WITH PREJUDICE**. Plaintiff's Article 1802 and § 1983 claims
8 against Malavé and Negrón in their personal capacities remain, as
9 well as the claims against the Defendants which have not joined this
10 motion to dismiss.

11 **IT IS SO ORDERED.**

12 San Juan, Puerto Rico, this 11th day of January, 2008.

13 s/José Antonio Fusté
14 JOSE ANTONIO FUSTE
15 Chief U. S. District Judge